

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Cedar Bluff Oil Company, Inc.)

Company Trailer No. 11)

Cedar Bluff, Cherokee County, Alabama)

ADEM Permit No. 303-T001-X004)

CONSENT ORDER NO.

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" or "ADEM") and Cedar Bluff Oil Company, Inc. (hereinafter, "Cedar Bluff") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Cedar Bluff is the permitted owner and/or operator of the gasoline bulk plant (hereinafter, the "Bulk Plant") and a gasoline transport vessel (hereinafter, the "Tank Truck") operating in Cedar Bluff, Cherokee County, Alabama. The Bulk Plant is operating under the authority of ADEM Permit No. 303-B001-X001 issued on January 21, 1993, and the Tank Truck is operating under the authority of ADEM Permit No. 303-T001-X004 issued on October 4, 2002 (hereinafter, the "Permits")
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the State air

pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. ADEM Admin. Code r. 335-3-6-.05(5)(f) states:

No owner or operator of a bulk gasoline plant, tank truck, or trailer shall permit the transfer of gasoline between tank truck or trailer and stationary storage tanks unless: (f) the gasoline tank truck or trailer has a valid Department Air Sticker as required by Rule 335-3-6-.20(4) attached and visibly displayed.

5. ADEM Admin. Code r. 335-3-6-.20(3)(b) and (c) state:

After October 1, 1991, no person shall allow a gasoline tank truck subject to this Rule to be filled or emptied unless the gasoline tank truck has: (b) a valid Department Air Sticker attached and visibly displayed; or, (c) a valid Jefferson County Department of Health Air Sticker attached and visibly displayed.

6. On June 24, 2009, the Department received from Cedar Bluff via facsimile a copy of the Method 27 Test requesting renewal of the Air Sticker, which indicated that the test was conducted on June 12, 2009. Upon further review of this submittal and the Permits, the Department noted that Cedar Bluff had allowed the previous Air Sticker to expire on July 31, 2008.

7. On July 16, 2009, the Department issued a Notice of Violation (NOV) to Cedar Bluff for allowing the Tank Truck to be filled or emptied without it having a valid Department Air Sticker attached and visibly displayed, in violation of ADEM Admin Code r. 335-3-6-.20(3)(b)(c).

8. On August 4, 2009 Cedar Bluff responded to the NOV and this response included following explanations and information:

a) Cedar Bluff provided a listing of gasoline dispensing facilities and the Cedar Bluff Bulk Plant as locations where gasoline deliveries were made between July 31, 2008 and June 12, 2009.

b) Cedar Bluff indicated that it was only loading product in Alabama on an as needed basis.

c) It submitted copies of the Bill of Lading concerning product loading and delivery for Tank Truck 303-T001-X004 during the expired period of the sticker.

d) Cedar Bluff clarified that the Method 27 test conducted on June 6, 2008 was sent via facsimile to the Department and to the terminals. However, it admitted that it did not receive a facsimile confirmation showing that the Method 27 test was transmitted successfully and that it failed to follow up with the Department when an Air Sticker was never received.

9. Additionally, Cedar Bluff violated Proviso No. 9 of the Bulk Plant Permit No. 303-B001-X001 by dispensing and receiving fuel while the Air Sticker for the Tank Truck was expired.

10. Cedar Bluff consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

11. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Cedar Bluff allowed the Tank Truck to be loaded/unloaded without having a valid Department Air Sticker and failed to obtain a new Air Sticker until June 29, 2009. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: By not operating the Tank Truck in such a manner as to comply with the Permits, Cedar Bluff did not exhibit a standard of care consistent with the requirements of the ADEM Admin. Code R.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Cedar Bluff likely derived little, if any, economic benefit from its non-compliance and delayed compliance.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts made by Cedar Bluff to minimize or mitigate the effects upon the environment due to its non-compliance.

E. HISTORY OF PREVIOUS VIOLATIONS: Cedar Bluff has no prior history of similar enforcement actions with the Department.

F. THE ABILITY TO PAY: Cedar Bluff has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, Cedar Bluff, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code §22-22A-5(18)c. (2006 Rplc.

Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Cedar Bluff agree to enter into this ORDER with the following terms and conditions:

A. Cedar Bluff shall pay to the Department a civil penalty in the amount of \$3,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Cedar Bluff agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. Not later than forty-five days from the effective date of this Consent Order, Cedar Bluff shall submit to the Department a plan detailing how it will ensure that the Air Sticker is kept current.

D. Cedar Bluff shall comply with the terms, limitations, and conditions of ADEM Admin. Code r. 335-3-6-.20 immediately upon the effective date of this Consent Order and continuing every day thereafter.

E. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she

represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, the parties agree that this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. Cedar Bluff agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, Cedar Bluff agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Cedar Bluff also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Cedar Bluff shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Cedar Bluff, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Cedar Bluff) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and

without the fault of Cedar Bluff, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The Department and Cedar Bluff agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Cedar Bluff shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

J. The Department and Cedar Bluff agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Cedar Bluff does hereby waive any hearing on the terms and conditions of same.

K. The Department and Cedar Bluff agree that this Order shall not affect Cedar Bluff's obligation to comply with any Federal, State, or local laws or regulations.

L. The Department and Cedar Bluff agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

M. The Department and Cedar Bluff agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

N. The Department and Cedar Bluff agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The Department and Cedar Bluff agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Cedar Bluff of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

CEDAR BLUFF OIL COMPANY, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

Onis "Trey" Glenn, III
Director

(Printed Name)

(Printed Title)

Date Signed: _____

Date Executed: _____